

HONORABLE ROBERT H. WHALEY

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

NOV 25 2009

JAMES R. LARSEN, CLERK
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RICHLAND, WASHINGTON

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON
AT SPOKANE

KIRK SPANGLE and JEANINE SPANGLE,
a marital community; and CLYDE
BENJAMIN KELLY, and JANE DOE
KELLY, a marital community,

Plaintiffs,

v.

FERGUSON ENTERPRISES, INC., a
foreign corporation doing business in
Washington

Defendant.

No. 08-CV-00168 RHW

STIPULATED PROTECTIVE
ORDER

The Parties stipulate pursuant to Fed. R. Civ. P. 26(c), subject to approval
and entry by the Court, as follows:

I. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve
production of confidential, proprietary, or private information for which special
protection from public disclosure and from use for any purpose other than
prosecuting this litigation would otherwise be warranted. Accordingly, the parties
hereby stipulate to and petition the Court to enter the following Stipulated
Protective Order. The parties acknowledge that this Order does not confer blanket

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1 protections on all disclosures or responses to discovery and that the protection it
 2 affords extends only to the limited information or items that are entitled under the
 3 applicable legal principles to be treated as confidential. The parties further
 4 acknowledge, as set forth in Section 10, below, that this Stipulated Protective
 5 Order creates no entitlement to file confidential information under seal; Local
 6 Rules set forth the procedures that must be followed and reflect the standards that
 7 will be applied when a party seeks permission from the Court to file material under
 8 seal.

9 **II. DEFINITIONS**

10 2.1 **PARTY**: Any party to this action, including all of its officers,
 11 directors, employees, consultants, retained experts, and counsel (and their support
 12 staff).

13 2.2 **DISCLOSURE OR DISCOVERY MATERIAL**: All items or
 14 information, regardless of the medium or manner generated, stored, or maintained
 15 (including, among other things, testimony, transcripts, or tangible things) that are
 16 produced or generated in disclosures or responses to discovery in this matter.

17 2.3 **"CONFIDENTIAL" INFORMATION OR ITEMS**: Information
 18 (regardless of how generated, stored or maintained) or tangible things that qualify
 19 for protection under Washington law, and under the standards developed under
 20 Fed. R. Civ. P. 26(c).

21 2.4 **RECEIVING PARTY**: A Party that receives Disclosure or
 22 Discovery Material from a Producing Party.

23 2.5 **PRODUCING PARTY**: A Party or non-party that produces
 24 Disclosure or Discovery Material in this action.
 25
 26

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1 2.6 **DESIGNATING PARTY**: A Party or non-party that designates
2 information or items that it produces in disclosures or in responses to discovery as
3 “CONFIDENTIAL.”

4 2.7 **PROTECTED MATERIAL**: Any Disclosure or Discovery Material
5 that is designated as “CONFIDENTIAL.”

6 2.8 **COUNSEL**: Outside Counsel and House Counsel as well as their
7 support staffs.

8 2.9 **EXPERT**: A person with specialized knowledge or experience in a
9 matter pertinent to the litigation who has been retained by a Party or its counsel to
10 serve as an expert witness or as a consultant in this action and who is not a past or
11 a current employee of a Party or of a competitor of a Party’s and who, at the time
12 of retention, is not anticipated to become an employee of a Party or a competitor of
13 a Party. This definition includes a professional jury or trial consultant retained in
14 connection with this litigation.

15 2.10 **PROFESSIONAL VENDORS**: Persons or entities that provide
16 litigation support services (*e.g.*, photocopying; videotaping; translating; preparing
17 exhibits or demonstrations; organizing, storing, retrieving data in any form or
18 medium; etc.) and their employees and subcontractors.

19 **III. SCOPE**

20 The protections conferred by this Order cover not only Protected Material
21 (as defined above), but also any information copied or extracted therefrom, as well
22 as all copies, excerpts, summaries, or compilations thereof, plus testimony,
23 conversations, or presentations by parties or counsel to or in court or in other
24 settings that might reveal Protected Material.

1 **IV. DURATION**

2 The confidentiality obligations imposed herein shall take effect upon the
3 Court's entry of this document and shall not terminate upon the conclusion of this
4 lawsuit, but shall remain in effect until a Designating Party agrees otherwise in
5 writing or the Court order otherwise directs. Provided, however, that the use of
6 CONFIDENTIAL information at trial is not addressed in this Order.

7 **V. DESIGNATING PROTECTED MATERIAL**

8 5.1 **EXERCISE OF RESTRAINT AND CARE IN DESIGNATING**
9 **MATERIAL FOR PROTECTION.** Each Party or non-party that designates
10 information or items for protection under this Order must take care to limit any
11 such designation to specific material that qualifies under the appropriate standards.
12 A Designating Party must take care to designate for protection only those parts of
13 material, documents, items, or oral or written communications that qualify, so that
14 other portions of the material, documents, items, or communications for which
15 protection is not warranted, are not swept unjustifiably within the ambit of this
16 Order.

17 Mass, indiscriminate, or routinized designations are prohibited.
18 Designations that are shown to be clearly unjustified, or that have been made for an
19 improper purpose (*e.g.*, to unnecessarily encumber or retard the case development
20 process or to impose unnecessary expenses and burdens on other parties), expose
21 the Designating Party to sanctions.

22 If it comes to a Party's or a non-party's attention that information or items
23 that it designated for protection do not qualify for protection at all, that Party or
24 non-party must promptly notify all other parties that it is withdrawing the mistaken
25 designation.
26

1 5.2 **MANNER AND TIMING OF DESIGNATIONS.** Except as
 2 otherwise provided in this Order, or as otherwise stipulated or ordered, material
 3 that qualifies for protection under this Order must be clearly designated before the
 4 material is disclosed or produced.

5 Designation in conformity with this Order requires:

6 5.2.1 For information in documentary form (apart from transcripts of
 7 depositions or other pretrial proceedings), that the Producing Party affix the legend
 8 CONFIDENTIAL on each page that contains protected material. A Party or
 9 non-party that makes original documents or materials available for inspection need
 10 not designate them for protection until after the inspecting Party has indicated
 11 which material it would like copied and produced. During the inspection and
 12 before the designation, all of the material made available for inspection shall be
 13 deemed CONFIDENTIAL. After the inspecting Party has identified the
 14 documents it wants copied and produced, the Producing Party must determine
 15 which documents, or portions thereof, qualify for protection under this Order, then,
 16 before producing the specified documents, the Producing Party must affix the
 17 appropriate legend ("CONFIDENTIAL") at the bottom of each page that contains
 18 Protected Material.

19 5.2.2 For testimony given in deposition or in other pretrial
 20 proceedings, that the Party or non-party offering or sponsoring the testimony
 21 designate it as CONFIDENTIAL by indicating on the record that it is
 22 CONFIDENTIAL and subject to the provisions of this Order. Alternatively, the
 23 Party or non-party need not designate specific testimony as CONFIDENTIAL
 24 during the course of the deposition, but may do so within 21 days of receiving a
 25 copy of the official transcript by notifying the court reporter of the portions of the
 26 testimony deemed CONFIDENTIAL and informing opposing counsel of such

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1 designations. Only those portions of the testimony that are appropriately
 2 designated for protection within 21 days of receiving a copy of the official
 3 transcript, shall be covered by the provisions of this Order.

4 5.2.3 For information produced in some form other than
 5 documentary, and for any other tangible items, that the Producing Party affix in a
 6 prominent place on the exterior of the container or containers in which the
 7 information or item is stored, the legend "CONFIDENTIAL."

8 5.3 **INADVERTENT FAILURES TO DESIGNATE**. If timely
 9 corrected, an inadvertent failure to designate qualified information or items as
 10 "CONFIDENTIAL" does not, standing alone, waive the Designating Party's right
 11 to secure protection under this Order for such material. If material is appropriately
 12 designated as "CONFIDENTIAL" or after the material was initially produced, the
 13 Receiving Party, on timely notification of the designation, must make reasonable
 14 efforts to assure that the material is treated in accordance with the provisions of
 15 this Order.

16 **VI. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

17 6.1 **TIMING OF CHALLENGES**. Unless a prompt challenge to a
 18 Designating Party's confidentiality designation is necessary to avoid foreseeable
 19 substantial unfairness, unnecessary economic burdens, or a later significant
 20 disruption or delay of the litigation, a Party does not waive its right to challenge a
 21 confidentiality designation by electing not to mount a challenge promptly after the
 22 original designation is disclosed.

23 6.2 **MEET AND CONFER**. A Party that elects to initiate a challenge to
 24 a Designating Party's confidentiality designation must do so in good faith and must
 25 begin the process by conferring in person or by phone with counsel for the
 26 Designating Party. In conferring, the challenging Party must explain the basis for

1 its belief that the confidentiality designation was not proper and must give the
2 Designating Party an opportunity to review the designated material, to reconsider
3 the circumstances, and, if no change in designation is offered, to explain the basis
4 for the chosen designation. A challenging Party may proceed to the next stage of
5 the challenge process only if it has first engaged in this meet and confer process.

6 **6.3 JUDICIAL INTERVENTION.** A Party that elects to press a
7 challenge to a confidentiality designation after considering the justification offered
8 by the Designating Party may file and serve a motion for this purpose.

9 **6.4 STATUS PENDING RESOLUTION OF DISPUTE.** Any disputed
10 document or information must be treated as protected under this Order until entry
11 of a court order ruling otherwise.

12 **VII. ACCESS TO AND USE OF PROTECTED MATERIAL**

13 **7.1 BASIC PRINCIPLES.** A Receiving Party may use Protected
14 Material that is disclosed or produced by another Party or by a non-party in
15 connection with this case only for prosecuting, defending, or attempting to settle
16 this litigation. Such Protected Material may be disclosed only to the categories of
17 persons and under the conditions described in this Order. When the litigation has
18 been terminated, a Receiving Party must comply with the provisions of section 11,
19 below (FINAL DISPOSITION).

20 Protected Material must be stored and maintained by a Receiving Party at a
21 location and in a secure manner that ensures that access is limited to the persons
22 authorized under this Order.

23 **7.2 DISCLOSURE OF CONFIDENTIAL INFORMATION OR**
24 **ITEMS.** Unless otherwise ordered by the court or permitted in writing by the
25 Designating Party, a Receiving Party may disclose any information or item
26 designated CONFIDENTIAL only to:

1 7.2.1 The Receiving Party's counsel in this action, as well as
2 employees of said counsel to whom it is reasonably necessary to disclose the
3 information for this litigation;

4 7.2.2 The officers, directors, and employees of the Receiving Party to
5 whom disclosure is reasonably necessary for this litigation.;

6 7.2.3 Experts (as defined in this Order) of the Receiving Party to
7 whom disclosure is reasonably necessary for this litigation and who have signed
8 the "Agreement to Be Bound by Protective Order" (Exhibit A);

9 7.2.4 The Court and its personnel;

10 7.2.5 Court reporters, their staffs, and professional vendors to whom
11 disclosure is reasonably necessary for this litigation and who have signed the
12 "Agreement to Be Bound by Protective Order" (Exhibit A);

13 7.2.6 During their depositions, witnesses in the action to whom
14 disclosure is reasonably necessary and who have signed the "Agreement to Be
15 Bound by Protective Order" (Exhibit A).

16 7.2.7 The author of the document, the employee to which the
17 document or data relates, or the original source of the information.

18 **VIII. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
19 **PRODUCED IN OTHER LITIGATION**

20 If a Receiving Party is served with a subpoena or an order issued in other
21 litigation that would compel disclosure of any information or items designated in
22 this action as "CONFIDENTIAL," the Receiving Party must so notify the
23 Designating Party, in writing immediately, and in no event more than three court
24 days after receiving the subpoena or order. Such notification must include a copy
25 of the subpoena or court order.

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1 The Receiving Party also must immediately inform in writing the Party who
 2 caused the subpoena or order to issue in the other litigation that some or all the
 3 material covered by the subpoena or order is the subject of this Order. In addition,
 4 the Receiving Party must deliver a copy of this Order promptly to the party in the
 5 other action that caused the subpoena or order to issue.

6 The purpose of imposing these duties is to alert the interested parties to the
 7 existence of this Order and to afford the Designating Party in this case an
 8 opportunity to try to protect its confidentiality interests in the court from which the
 9 subpoena or order issued. The Designating Party shall bear the burdens and the
 10 expenses of seeking protection in that court of its confidential material, and
 11 nothing in these provisions should be construed as authorizing or encouraging a
 12 Receiving Party in this action to disobey a lawful directive from another court.

13 **IX. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

14 If a Receiving Party learns that, by inadvertence or otherwise, it has
 15 disclosed Protected Material to any person or in any circumstance not authorized
 16 under this Order, the Receiving Party must immediately (a) notify in writing the
 17 Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve
 18 all copies of the Protected Material, (c) inform the person or persons to whom
 19 unauthorized disclosures were made of all the terms of this Order, and (d) request
 20 such person or persons to execute the "Acknowledgment and Agreement to Be
 21 Bound," that is attached hereto as Exhibit A.

22 **X. FILING PROTECTED MATERIAL**

23 Without written permission from the Designating Party or a court order
 24 secured after appropriate notice to all interested persons, a Receiving Party may
 25 not file in the public record in this action any Protected Material. A Party that
 26 seeks to file under seal any Protected Material must comply with local rules.

1 **XI. FINAL DISPOSITION**

2 Unless otherwise ordered or agreed in writing by the Producing Party, within
 3 sixty days after the final termination of this action, each Receiving Party must
 4 return all Protected Material to the Producing Party. As used in this subdivision,
 5 “all Protected Material” includes all copies, abstracts, compilations, summaries or
 6 any other form of reproducing or capturing any of the Protected Material. With
 7 permission in writing from the Designating Party, the Receiving Party may destroy
 8 some or all of the Protected Material instead of returning it. Whether the Protected
 9 Material is returned or destroyed, the Receiving Party must submit a written
 10 certification to the Producing Party (and, if not the same person or entity, to the
 11 Designating Party) by the sixty day deadline that identifies (by category, where
 12 appropriate) all the Protected Material that was returned or destroyed and that
 13 affirms that the Receiving Party has not retained any copies, abstracts,
 14 compilations, summaries or other forms of reproducing or capturing any of the
 15 Protected Material. Notwithstanding this provision, Counsel are entitled to retain
 16 an archival copy of all pleadings, motion papers, transcripts, legal memoranda,
 17 correspondence or attorney work product, even if such materials contain Protected
 18 Material. Any such archival copies that contain or constitute Protected Material
 19 remain subject to this Order as set forth in Section IV (DURATION), above.

20 **XII. MISCELLANEOUS**

21
 22 12.1 **RIGHT TO FURTHER RELIEF.** Nothing in this Order abridges
 23 the right of any person to seek its modification by the Court in the future.

24 12.2 **RIGHT TO ASSERT OTHER OBJECTIONS.** By stipulating to
 25 the entry of this Order, no Party waives any right it otherwise would have to object
 26 to disclosing or producing any information or item on any ground not addressed in

1 this Order. Similarly, no Party waives any right to object on any ground to use in
2 evidence, any of the material covered by this Protective Order.

3
4 12.3 **COURT MODIFICATION.** This Court may modify the terms of
5 this Protective Order *sua sponte* upon notice to the parties and an opportunity to be
6 heard.

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8 IT IS SO ORDERED this 25th day of November, 2009.

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11 _____
12 Honorable Robert H. Whaley
13 United States District Court Judge
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STIPULATION OF THE PARTIES

Dated: November 16, 2009

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EXHIBIT A**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, _____ [print or type full name], of
 _____ [print or type full address], declare under penalty
 of perjury that I have read in its entirety and understand the Stipulated Protective
 for the case of *Spangle v. Ferguson Enterprises, Inc.*, District Court Case No. 08-
 CV-00168 RHW. I agree to comply with and to be bound by all the terms of the
 Stipulated Protective Order, and I understand and acknowledge that failure to so
 comply could expose me to sanctions and punishment in the nature of contempt. I
 solemnly promise that I will not disclose in any manner any information or item
 that is subject to the Stipulated Protective Order to any person or entity except in
 strict compliance with the provisions of the Stipulated Protective Order.

I further agree to submit to the jurisdiction of the United States District
 Court for the Western District of Washington a for the purpose of enforcing the
 terms of the Stipulated Protective Order, even if such enforcement proceedings
 occur after termination of this action.

I hereby appoint _____ [print or type full name] of
 _____ [print or type full address and telephone
 number] as my Washington State agent for service of process in connection with
 this action or any proceedings related to enforcement of the Stipulated Protective
 Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____

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